IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 11TH JUNE 2007 / 21ST JYAISHTA 1929

WP(C).No. 18954 of 2006(F)

OA.256/2001 of DEBT RECOVERY TRIBUNAL, ERNAKULAM

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PETITIONER:

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1. S.VIJAYAN, S/O.STEPHEN,
   V.S.BUILDING, V.P.NO.14/715, MANNANTHALA,
   TRIVANDRUM.

2. SHOBHA, W/O.S.VIJAYAN, RESIDING AT
   V.S.BUILDING, V.P.NO. 14/715,
   MANNANTHALA, TRIVANDRUM.

BY ADV. SRI.M.RAMASWAMY PILLAI
SRI.P.M.JOSEPH
SRI.M.MADHUSOODANAN NAIR

RESPONDENTS:

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1. THE CATHOLIC SYRIAN BANK LTD.,
   REPRESENTED BY ITS MANAGER, MANNANTHALA BRANCH,
   THIRUVANANTHAPURAM-695 015.

2. THE DEBT RECOVERY APPELLATE TRIBUNAL,
   REPRESENTED BY ITS REGISTRAR, INDIAN BANK
   ZONAL OFFICE BUILDING, CHENNAO.

3. THE RECOVERY OFFICER,
   DEBT RECOVERY TRIBUNAL, HOUSING BOARD BUILDING,
   COCHIN.

R1 BY ADV. SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 TRUE COPY OF THE ORDER PASSED BY THE DEBT RECOVERY APPELLATE TRIBUNAL DATED 26.6.2006

EXT.P2 TRUE COPY OF THE NOTICE ISSUED BY THE RECOVERY OFFICER DATED 6.6.2006

EXT.P3 PHOTOCOPY OF REMITTANCE RECEIPTS.

EXT.P4 PHOTOCOPY OF ORDER DATED 5.9.2006 IN URA-16/2006 ON THE FILES OF THE DEBT RECOVERY APPELLATE TRIBUNAL, CHENNAI.

EXT.P5 TRUE COPY OF ORDER DATED 1.8.2006 IN WPC 18954/2006 OF THIS HON'BLE COURT.

ANNEXURE I TRUE COPY OF RECEIPT.

ANNEXURE II TRUE COPY OF RECEIPT.

RESPONDENTS' EXHIBITS:NIL.

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 18954 OF 2006

Dated this the 11th day of June, 2007

JUDGMENT

Heard counsel for the petitioner and standing counsel for the Bank. I have gone through the latest statement furnished by the Bank along with copy of letter dated 2.3.2007 issued by the Bank to the petitioner for settlement of liability at OTS rates. It is seen that DRT has passed decree in favour of the Bank for Rs. 20,42,675/- in January, 2006. Petitioner through instalments remitted Rs. 8.5 lakhs in the course of one year. Mortgaged property consists of a three storied building in the town area which is valued by the Bank at around Rs. 17 lakhs and another item of property which is a village land valued by the Bank around Rs. 86,000/-. Petitioner has produced valuation report from a qualified Engineer fixing the market value of the three storied building in the town area at Rs. 58 lakhs. Photograph of the building is also produced in court. On the face of it, I feel the valuation by the Bank is considerably low. In any case, even going by the valuation by the Bank, I do not think Bank can resist the petitioner's request for

releasing the title deed of B schedule property on petitioner remitting Rs. 4 lakhs. It is seen that the Bank has given OTS benefit to the petitioner on 2.3.2007 to settle the liability at Rs. 18 lakhs, if payment was made on or before 15.3.2007. Petitioner's prayer is only for direction to the Bank to retain the OTS benefit but by granting reasonable time for the petitioner to arrange funds and settle liability. Petitioner's bona fide is established through massive payment made in the course of last one year. It is seen from the statement of the Bank that Bank is charging interest only at the rate of 10 per cent on the outstanding. Counsel for Bank submitted that if time is extended by this Court for payment, Bank should be granted higher rate of interest. I feel Bank is entitled to higher rate of interest. Considering penal interest normally charged over and above the agreed rate is 2%, W.P. is disposed of with the following directions.

2. Petitioner is free to negotiate for sale of B schedule property that is the property located in the village and can even enter into agreement for sale of that property. On the petitioner or the purchaser to the agreement remitting Rs. 4 lakhs with the respondent-Bank, the title deed of B schedule property will be released to the petitioner, retaining the title deed of A schedule property. Recovery proceedings

against the sale of mortgaged property, including B schedule property, will remain stayed for two months hereafter for the petitioner to remit Rs. 4 lakhs by sale of B schedule property title deed of which will be released on payment of Rs. 4 lakhs. The Bank will continue to charge the same rate of interest in terms of decree till today and hereafter additional two per cent will be charged on the outstanding until full payment is made. If balance liability is not settled by 10th of November, 2007, there will be direction to the petitioner to hand over the three storied building free of possession to the Bank after 10.11.2007 and thereafter the Bank is free to sell the property and recover the arrears in terms of the decree, treating the OTS granted vide letter dated 2.3.2007 as cancelled. However, if payment is made within the time stipulated above, the Bank will recover OTS amount with addl. interest as stated above. Rs. 18 lakhs referred to above is in terms of the Bank's letter dated 2.3.2007. If petitioner has made any payment after 2.3.2007 obviously the same will go to reduce the liability from OTS amount.

(C.N.RAMACHANDRAN NAIR)
Judge